From: Geoffrey Broadwell
To: Microsoft ATR
Date: 1/27/02 6:17pm
Subject: Microsoft Settlement

To whom it may concern:

I am a user of, and a software developer for, freely available operating systems such as Linux and the BSD variants of Unix. I have read and agree with Dan Kegel's analysis of the Proposed Final Judgment at:

http://www.kegel.com/remedy/remedy2.html

However, I feel that Mr. Kegel's analysis, in its detail, loses some of the overall flavor of how a free / open source software user and developer would view the case.

As a free software user, a few issues are important to me:

* I must be able to read, write, and edit documents and other data complying with all standards and de facto standards in use in the corporate world or the Internet at large.

* I must have access to programs that interoperate with all standard and de facto standard protocols (and all clients, servers, and peers implementing those protocols) in use in the corporate world or the Internet at large.

* I must be able to use entirely freely available software to perform these functions. This requires both that barriers to the development of such software be low, and that artificial restrictions to their use, such as unfairly restrictive licensing terms, unclear patent infringement issues, and the like, be removed.

As a free software developer, different but related issues are important:

* The free software community must have unfettered access to complete, accurate, and timely documentation for all data formats in common use in the corporate world or the Internet at large.

* The free software community must have unfettered access to complete, accurate, and timely documentation for all protocols in common use in the corporate world or the Internet at large, along with documentation for known variances of commonly used clients, servers, and peers from the expected and / or standard protocol behavior.

* For cases in which use of, implementation of, or interoperability with an API is necessary (in the broadest sense), similar access to complete, accurate, and timely documentation for that API must also

exist.

* Test suites that can be used to show compliance or noncompliance of an implementation to these documents must exist, suitable both to test that competitive implementations perform properly, and possibly more importantly, to test that the documentation is an accurate reflection of the true behavior of the original implementation(s) that made use of, or provided, said data formats, protocols, and / or APIs.

* Restrictions to development or use of compliant or interoperable software for any data format, protocol, or API, must be minimized. In particular, license restrictions that limit the use of a program, data format, API, or protocol inclusively or exclusively with regard to certain operating systems, license terms for other software in the user's or developer's computing environment, competing software implementations, etc., must be disallowed.

  In addition, any components or data files that all compliant or interoperable software implementations must distribute to be deemed compliant or interoperable, must allow such distribution by other implementations, for installation in any software environment that a user or developer sees fit.

* Hidden restrictions to development or use of competitive software, such as the status of patents or pending patents whose applicability to relevant data formats, protocols, and / or APIs is unclear, must be dealt with in good faith. For example, no developer or vendor of software should be allowed to threaten that use of competing software "might" infringe "certain" patents held by the developer or vendor or any of their partners.

  For cases where a developer or vendor can definitively claim that unlicensed use of a competing product making use of, implementing, or interoperating with, any data format, protocol, or API, would constitute infringement of a patent they own or control, such patent must be licensable under terms that would not be onerous to developers or users in the free software community. Per-seat licensing, licensing that requires large payments, licensing that involves non-disclosure agreements, and licensing that requires specific action by any person or entity other than the initial developers of the competing software, are all instances of onerous terms that must not be allowed to stand.

All of these comments have been generic, without reference to the specific case and judgment at hand, but I hope it is clear that many of the concerns that I list above have not been adequately addressed by the Proposed Final Judgment in United States v. Microsoft Corp.

Other analysis and commentary, such as Mr. Kegel's work linked above, offer specific possible improvements to the Proposed Final Judgment that will address some of these concerns. When taking these suggestions into account during revision of the proposal, please also consider whether the various suggestions go far enough to adequately address my concerns as a user and a developer from the community at large. While I believe that all software developers and vendors should be held accountable for how they address or fail to address these concerns, it is especially important to require this of Microsoft, since Microsoft maintains a monopoly position for implementations of a great many standards and de facto standards.

Thank you in advance for your consideration,

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